



Billing Code: 4910-57-P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket No. FTA-2014-0021]

Notice of Proposed Buy America Waiver for a Variable Refrigerant Flow HVAC System

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of proposed Buy America waiver and request for comment.

SUMMARY: The Federal Transit Administration (FTA) received a request for a waiver to permit the purchase of a Variable Refrigerant Flow (VRF) HVAC system that is non-compliant with Buy America requirements using FTA funding. The request is from the San Bernardino Associated Governments (SANBAG) for the Omnitrans San Bernardino Transit Center (SBTC). In accordance with 49 U.S.C. 5323(j)(3)(A), FTA is providing notice of the waiver request and seeks public comment before deciding whether to grant the request. If granted, the waiver would apply only to the FTA-funded procurement of a VRF HVAC system by SANBAG.

DATES: Comments must be received by [INSERT DATE 7 DAYS AFTER PUBLICATION]. Late-filed comments will be considered to the extent practicable.

ADDRESSES: Please submit your comments by one of the following means, identifying your submissions by docket number FTA-2014-0021:

1. Web site: <http://www.regulations.gov>. Follow the instructions for submitting comments on the U.S. Government electronic docket site.
2. Fax: (202) 493-2251.

3. Mail: U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Docket Operations, M-30, West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001.

4. Hand Delivery: U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Docket Operations, M-30, West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: All submissions must make reference to the “Federal Transit Administration” and include docket number FTA-2014-0021. Due to the security procedures in effect since October 2011, mail received through the U.S. Postal Service may be subject to delays. Parties making submissions responsive to this notice should consider using an express mail firm to ensure the prompt filing of any submissions not filed electronically or by hand. Note that all submissions received, including any personal information therein, will be posted without change or alteration to <http://www.regulations.gov>. For more information, you may review DOT’s complete Privacy Act Statement in the Federal Register published April 11, 2000 (65 FR 19477), or you may visit <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Richard L. Wong, FTA Attorney-Advisor, at (202) 366-4011 or richard.wong@dot.gov.

SUPPLEMENTARY INFORMATION: The Federal Transit Administration (FTA) seeks comment on whether it should grant non-availability waiver for the San Bernardino Associated Governments’ (SANBAG) procurement of a Variable Refrigerant Flow (VRF) HVAC system for the Omnitrans San Bernardino Transit Center (SBTC) using FTA grant funding.

With certain exceptions, FTA’s Buy America requirements prevent FTA from obligating an amount that may be appropriated to carry out its program for a project unless “the steel, iron, and manufactured goods used in the project are produced in the United States.” 49 U.S.C.

5323(j)(1). A manufactured product is considered produced in the United States if: (1) all of the manufacturing processes for the product must take place in the United States; and (2) all of the components of the product must be of U.S. origin. A component is considered of U.S. origin if it is manufactured in the United States, regardless of the origin of its subcomponents. 49 CFR 661.5(d). If, however, FTA determines that “the steel, iron, and goods produced in the United States are not produced in a sufficient and reasonably available amount or are not of a satisfactory quality,” then FTA may issue a waiver (non-availability waiver). 49 U.S.C. 5323(j)(2)(B); 49 CFR 661.7(c).

SANBAG is requesting a non-availability waiver for its procurement of a VRF HVAC system that will be installed in a multimodal transfer facility in downtown San Bernardino, California, which will serve both transit patrons and operators of Omnitrans’ fixed route buses, the newly opened sbX bus rapid transit (BRT) line, the Victor Valley Transit Authority, the Mountain Area Regional Transit Authority, and the Southern California Regional Rail Authority (Metrolink). This facility is being built to U.S. Green Building Council (USGBC) Leadership in Energy and Environmental Design (LEED) standards and will incorporate a number of sustainable and energy efficient elements. One of those elements is a VRF HVAC system that, among other things, is space saving, has inverter technology, efficiency, and a non-ozone depleting refrigerant that domestic manufacturers of HVAC systems do not provide. According to SANBAG, its contractor was directed to evaluate the substitution of a Buy America-compliant Variable Air Volume (VAV) system, but the contractor advised SANBAG that the VAV system would endanger the project’s LEED Gold certification because of the difference in efficiency between the VAV and VRF HVAC systems. In addition, the substitution of a VAV system would require significant changes to the project, such as the alteration of already-erected structural elements

that were designed to accommodate a VRF system and additional design changes and plan reviews by the City of San Bernardino.

SANBAG points to a recent non-availability waiver FTA issued to St. Louis' MetroLink for a similar VRF system (79 FR 34653, June 17, 2014), as well as to a blanket non-availability waiver issued by the U.S. Department of Energy (DOE) in 2010 for VRF HVAC systems procured with American Reinvestment and Recovery Act funding (75 FR 35447, June 22, 2010). According to SANBAG, the U.S. DOE's determination of non-availability and FTA's recent St. Louis MetroLink waiver, as well as their own contractor's research, indicate that this product is not manufactured domestically.

The purpose of this notice is to publish SANBAG's request and to seek public comment from all interested parties in accordance with 49 U.S.C. 5323(j)(3)(A). Comments will help FTA understand completely the facts surrounding the request, including the effects of a potential waiver and the merits of the request. A full copy of the request has been placed in docket number FTA-2014-0021.

Dana Nifosi,
Acting Chief Counsel.